



May 1, 2001

Mr. Juan J. Cruz  
Escamilla & Poneck, Inc.  
Falcon International Building  
5219 McPherson, Suite 306  
Laredo, Texas 78041

OR2001-1760

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146662.

The Clint Independent School District (the "district"), which you represent, received a request for the personnel file of a former district employee, any records generated as a result of an investigation of the employee, and any correspondence between the district and the State Board of Educator Certification relating to the employee. You state that information not excepted will be provided to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the letter to the State Board of Educator Certification in Exhibit B is excepted under section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added). However, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455 (Tex. App.—Houston [14th Dist.] 1996, writ denied) (records relating to problems with specific employee do not relate

to making of new policy but merely implement existing policy); Open Records Decision No. 615 at 5-6 (1993). *But See* Open Records Decision No. 631 (1995) (finding personnel matters of a broader scope were excepted from disclosure under section 552.111). After reviewing the submitted information, we conclude that Exhibit B relates to routine personnel matters and, therefore, is not protected under section 552.111 of the Government Code.

You also claim that criminal history record information ("CHRI") must be withheld under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 411.097 of the Government Code provides that criminal history record information relating to an applicant for employment by a school district that the school district obtains from the Department of Public Safety may not be released to any person, other than certain named parties, which are not applicable here. *See also* 28 C.F.R. § 20.21(c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Therefore, you must withhold any CHRI about the employee in your possession.

Further, section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, you must withhold any CHRI compiled by the district under section 552.101 of the Government Code and the holding in *Reporters Committee*.

We note that Exhibits C and D contain information that may be excepted under section 552.117(1) of the Government Code. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, social security number, and family member information of a current or former government employee, if the employee elected to withhold this information under section 552.024. Please note that whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a proper election must be made *prior* to the request for information. If the employee elected prior to the request to keep this information confidential under section 552.024, you must withhold the marked information under section 552.117(1) of the Government Code. If no timely election has been made, then you may not withhold the marked information under section 552.117 of the Government Code.

We note that social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision

of law enacted on or after October 1, 1990. *See id.* However, it is not apparent to us that the social security number was obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the district, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, the district should ensure that this number was not obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

Exhibit D also contains an I-9 form. Release of employment eligibility verification form I-9 is governed by title 8, section 1324a of the United States Code. This statute provides that I-9 forms "may not be used for purposes other than for enforcement of [the immigration laws of] this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *See* 8 C.F.R. § 274a.2(b)(4). Release of this document under chapter 552 of the Government Code would not be for a permitted purpose; accordingly, we conclude that the I-9 form is confidential and must be withheld under section 552.101 of the Government Code.

You also claim that information in Exhibit D must be withheld under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the copy of the driver's license under section 552.130(a) of the Government Code.

Next, you contend that the document in Exhibit E is excepted under section 552.101 and the Family Educational Rights and Privacy Act of 1974 ("FERPA"). *See* 20 U.S.C. § 1232g(b)(1). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). Accordingly, you must withhold the name of the student in the document in Exhibit E pursuant to FERPA. We have marked the information that you must withhold under FERPA. The remaining information in the document is not excepted under FERPA and must be released.

In conclusion, you must withhold any CHRI and the I-9 form under section 552.101 of the Government Code. Further, you must withhold the student's name under FERPA. You must also withhold section 552.130 information and the home address and social security number under section 552.117(1) if the former employee elected to keep this information confidential under section 552.024. Further, the social security number might be excepted under federal law. You must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

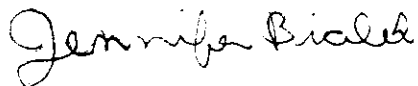
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/rr

Ref: ID# 146662

Encl.: Submitted documents

cc: Mr. Danny Robbins  
*Houston Chronicle*  
P.O. Box 4260  
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(w/o enclosures)